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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,665	06/11/2001	Ulrich Deiss	ZTP 98 P 3021	2035

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EXAMINER

TRAN, KHOA H

ART UNIT                      PAPER NUMBER


3634

DATE MAILED: 06/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

PK

# Office Action Summary

Application No. <b>09/878,665</b>	Applicant(s) <b>Deiss</b>	
Examiner <b>Khoa Tran</b>	Art Unit <b>3634</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1)  Responsive to communication(s) filed on Apr 2, 2002
- 2a)  This action is FINAL.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- 4)  Claim(s) 1-9 and 11-20 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-9 and 11-20 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a)  All b)  Some\* c)  None of:
- Certified copies of the priority documents have been received.
  - Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a)  The translation of the foreign language provisional application has been received.
- 15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1)  Notice of References Cited (PTO-892)                      4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5)  Notice of Informal Patent Application (PTO-152)
- 3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_                      6)  Other:

Art Unit: 3634

### *Drawings*

The drawings are objected to under because there is no pivotable connection shown. Note that while different orientations are shown in various Figures, there is no disclosure of any structure enabling these orientations to occur.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the dishwasher and rack's top and bottom of claims 11-14 must be shown or the features canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

The specification is objected to because it is unclear as to what elements constitute the "dish rack 1" and what elements constitute the "dish rack base 2" since the Figures appear to show them to be one and the same. While it can be said that the arrowhead of "1" is inclusive of all of the elements to constitute the "rack", what element is the arrowhead of "2" pointing to? What specific elements denote the dish rack base? This is especially critical to the claimed invention since it is required that ends of some prongs be "directed toward" the base. However,

Art Unit: 3634

both ends of each prong 4 are shown in the drawings to extend away from any shown structure that would reasonably appear to constitute the “base”, i.e., wire 3.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter of “comb-shaped retaining configuration”. Further, it is noted that there is no discussion of this language in applicant’s remarks. Appropriate correction and/or clarification by applicant is required.

#### ***Claim Objections***

Line 1 of claim 8 is objected to because the hyphen between “dish” and “rack” should be deleted in order to maintain consistency of terminology.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 1, 11, and 15, it is unclear to what applicant is attempting to define with the recitation of “prongs as integral dish rack components”. What is “integral”? Is applicant setting forth that each prong is an integral prong? Is applicant

Art Unit: 3634

setting forth that each prong is integrally connected to some other component of the dish rack?

What exactly is supposed to be integral with what?

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 and 11-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Remmler. The claims are of such breadth that they read on the multi-functional of the dish holder of Remmler. Remmler discloses a dishwasher (10) comprising a dish rack (40) having a top and a bottom (not numbered) and a plurality staggering prongs for retaining cups (66) and hollow dishes (68) in an alternative manner. The dish rack comprises a plurality of second prongs (62) oriented at an angle and integrally formed in an L-shaped (52) with the first bottom end prongs (62). The second prongs (62) having a free end and with the bottom prongs (60) are angled and integrally formed with the dish rack component of a longitudinal retaining base wire (50). The retaining base wire and the L-shaped prongs (52) form a stop for retaining the hollow dishes (68) between wires. The free end prongs (62) and the bottom angled end prongs (60) form an L-shaped or comb-shaped retaining configuration, wherein the comb-shaped retaining configuration

Art Unit: 3634

is pivotable into a horizontal, vertical, and oblique positions such that the oblique position is of half way between the horizontal and vertical positions, see Figures 4 and 5.

***Response to Amendment***

Applicant's arguments filed April 02, 2002 have been fully considered but they are not persuasive.

With respect to applicant's general reference to "rake-like", it is noted that none of the remarks state just what was meant by the recitation "rake-like retaining configuration" nor is there any discussion of what is intended by the change to "comb-shaped retaining configuration" or how this change solves the examiner's concerns.

Further, contrary to applicant's general denial, "rake-like" by itself is indefinite since it is not known what property of a rake makes the item "rake-like". Is it applicant's position that the rack base has an elongated head portion and a handle portion like rakes?

It is noted that applicant has amended the claim language to now recite "comb-shaped retaining configuration". However, there is no discussion of how/why this change overcomes the previous rejection. Further, given the lack of any antecedent basis for this terminology in the specification, it is still not clear what "configuration" applicant is attempting to set forth.

With respect to the remarks regarding the various positions, it is noted that the prongs are L-shaped. Accordingly, what basis is being relied upon to determine when the orientation is

Art Unit: 3634

“vertical”, “horizontal”, etc.? Is this determination made in consideration of the positioning of the longer leg end?

Applicant’s remarks on pages 7-8 of the response are acknowledged. However, it first should be noted that “integral” merely means “unitary whole”. Second, there is nothing in the recitation requiring the integral components to be integral with the dish rack, itself. Nevertheless, Remmler is clearly a dish rack and the prongs are clearly integral components thereof. Note, also the ambiguity created by this recitation as advanced above. Accordingly, it appears that applicant is relying on the specification (or some other source) to impart to the claims limitations otherwise not recited therein. This reliance is ineffective.

It is noted that the “integral component” recitation is the only issue of patentability raised by the applicant and that none of the depending claims were argued separately. Accordingly, the patentability of claims 2-9, 12-14 and 16-20 stand or fall with the patentability of claims 1, 11, and 15.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

Art Unit: 3634

1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa Tran whose telephone number is (703) 306-3437. The examiner can normally be reached on Monday through Thursday from 8:30 A.M. to 7:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola, can be reached on (703) 308-2686. The fax phone number for this Group is (703) 305-3597 or (703) 305-3598.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

If the applicant is submitted by facsimile transmission, applicant is hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and M.P.E.P. 502.02). In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission.

Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check. Responses submitted by facsimile transmission should include a Certificate of Transmission (M.P.E.P 512). The following is an example of the format the certification might take:



Art Unit: 3634

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. \_\_\_\_\_ ) on \_\_\_\_\_  
(Date)

Type or printed name of person signing this certificate:

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

Furthermore, please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Khoa Tran

June 06, 2002



DANIEL P. STODOLA  
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